

IN THE MATTER OF:

Order No. 10-XXX-ST

6. On June 12, 2006, the Department issued Scrap Tire Transporter Permit No. S0000029243, to Larry Farris dba Tire Eater (hereinafter "the Operator") for a facility located at 5278 Levert Road, Wilmer, in Mobile County, Alabama.

7. On October 16, 2007, the Department notified the Operator via certified mail that the financial assurance instrument had expired.

8. On December 12, 2007, the Department issued a Notice of Violation (hereinafter "NOV") to the Operator for failing to demonstrate that the financial assurance was in force.

9. The Department did not receive a written response to the December 12, 2007, NOV.

10. On March 24, 2008, the Department issued a Failure to Respond letter to the Operator which requested a response to the December 12, 2007, NOV.

11. The Department did not receive a written response to the March 24, 2008, Failure to Respond letter.

12. On December 19, 2008, the Department issued a letter, via certified mail, revoking the Operator's Transporter Permit.

13. On March 19, 2009, Department personnel discovered through various document reviews that the Operator had transported scrap tires without a valid transporter permit.

14. On April 10, 2009, the Operator was issued a NOV for transporting scrap tires without a valid transporter permit.

15. On May 21, 2009, the Department issued a Failure to Respond to the Operator which requested a response to the April 10, 2009, NOV.

16. The Department did not receive a written response to the May 21, 2009, Failure to Respond letter.

17. The Department subsequently discovered through various document reviews that the Operator had continued to transport scrap tires without a valid transporter permit.

18. On June 30, 2009, the Department issued a NOV to the Operator for transporting tires without a valid scrap tire transporter permit.

19. On August 21, 2009, the Department issued a Failure to Respond to the Operator which requested a response to the June 30, 2009, NOV.

20. The Department did not receive a written response to the August 21, 2009, Failure to Respond letter.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Operator; the economic benefit which delayed compliance may confer upon the Operator; the nature, extent and degree of success of the Operator's efforts to minimize or mitigate the effects of such violation upon the environment; the Operator's history of previous violations; and the ability of the Operator to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Operator did not comply with provisions of ADEM Admin. Code div. 335-4. The Department has no evidence of any irreparable harm to the environment.

B. **THE STANDARD OF CARE:** The Operator failed to operate in a manner commensurate with applicable scrap tire laws and regulations.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Operator has realized a significant economic benefit as a result of the violations noted; however, the Operator did not incur costs associated with operating in accordance with Division 4 Regulations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any effects upon the environment as a result of the violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history of similar violations.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$7,500 is appropriate given the repeat actions of the violator, and in keeping with a penalty range imposed by the Department for similar violations at other facilities, as follows:

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Scrap Tire Transporter Permit Requirements	\$100 - \$25,000

ORDER

Based on the foregoing findings of facts and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), and 22-22A-5(18), it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, the Operator shall pay to the Department a civil penalty in the amount of Seven Thousand Five Hundred dollars (\$7,500.00) for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the Operator's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, the Operator shall cease and desist from transporting scrap tires without a valid transporter permit.

C. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.

D. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, _____.

Onis "Trey" Glenn, III

Director

CERTIFICATE OF SERVICE

I, _____, hereby certify that I have this date served the foregoing
Administrative Order on _____ by regular United States Mail, properly
addressed and postage prepaid to:

Larry Farris dba Tire Eater
5278 Levert Road
Wilmer, Alabama 36587

Done this _____ day of _____, 2009.

Name